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ELECTION COMMISSION, INDIA

1, AURANGAZEB ROAD, NEW DELHI,

Dated, the March 14, 1958/Phalguna 23, 1879, Saka.

NOTIFICATION

No. 82/38/57/2213. In continuation of Election Commission's Notification No. 82/38/57/7265 dated the 6th December, 1957, published in the Kerala Gazette Extraordinary [Vol. II-No. 131] dated the 12th December, 1957, under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgment of the High Court of Kerala delivered on the 21st February, 1957, on the appeal filed by Shrimati Rosamma Punnose, Advocate, P. O. Ponkunnam, Kottayam District (Kerala State) against the order dated 14th November, 1957, of the Election Tribunal, Kottayam in Election Petition No. 38 of 1957.

By order,
S. C. ROY,
Secretary to the
Election Commission.

IN THE HIGH COURT OF KERALA, ERNAKULAM

Friday, the 21st day of February, One thousand nine hundred and fifty-eight.

Present:

THE HON'BLE MR. JUSTICE M. S. MENON

and

THE HON'BLE MR. JUSTICE P. T. RAMAN NAYAR.

Election Appeal No. 4 of 1957.

Election Petition 38/57 of the Election Tribunal, Kottayam.

Rosamma Punnose, Advocate, Ponkunnam, Kottayam District, Kerala.	Appellant—1st Respondent.

By Advocates: M/s. V. Sankara Menon and N. Gangadhara Menon.

1. Mattappillil Balakrishnan Nair, S/o Velayudha Panicker, I. N. T. U. C. Office, P. O. Mundakkayam, Kottayam District.	1st Respondent—Petitioner.
2. N. Ganapathy, P. O. Munnar Town, Kottayam District, Kerala.	2nd Respondent—2nd Respondent.

1st Respondent by Advocates M/s P. Govinda Menon, P. K. Krishnankutty Menon and P. Narendra Menon.

2nd Respondent by Advocate Sri K. Velayudhan Nair.

This appeal having been finally heard on 31-1-1958, the Court on 21-2-1958 delivered the following:—

JUDGMENT.

Raman Nayar, J.

At the last General Election held in March, 1957 the appellant was declared duly elected to the Legislative Assembly of this State from the General Seat of the Devicolam Constituency. In April the 1st respondent, a candidate whose nomination had been rejected by the Returning Officer, filed the present petition for a declaration that the election of the appellant was void on the ground mentioned in section 100 (1) (c) of the Representation of the People Act, 1951, (hereinafter referred to as the Act). The petition has been allowed by the Election Tribunal, Kottayam, and hence this appeal.

2. The 2nd respondent was returned from the reserved seat, and against him no relief has been claimed. He may be ignored altogether and we shall hereafter refer to the 1st respondent (namely the petitioner before the Tribunal) as merely the respondent.

3. The only question is whether the rejection of the respondent's nomination was improper. If it was, it is not disputed that in view of section 100 (1) (c) of the Act the

election of the appellant has to be set aside. The competence of the respondent to maintain the petition was never in question.

4. The last date appointed for making nominations was the 29th January 1957, and on the previous day, at about 2 p. m. the respondent delivered two nomination papers, Exts. P-2 and P-5, to P. W. 1, the Assistant Returning Officer for the constituency, at his office in Peermade. Being an elector, not of the Devicolam but of the Alleppey Constituency, he also produced before P. W. 1, Ext. P-3, a printed copy of the part of the electoral roll of the Alleppey Constituency in which his name appeared. He was accompanied by his two proposers, P. W. 4, Devasia Varkey by name, and one Mohammed Kutty who is not a witness. P. W. 1 checked Exts. P-2 and P-5 with Ext. P-3 and also with Ext. P-1, a copy of the electoral roll of the Devicolam Assembly Constituency officially supplied to him and, after satisfying himself (albeit mistakenly) as required by section 33 (4) of the Act, that the names and electoral roll numbers of the respondent and his proposers as entered in the nomination papers, Exts. P-2 and P-5, were the same as those entered in the electoral rolls, Exts. P-3 and P-1, signed the endorsement of delivery on the nomination papers and issued to the respondent the prescribed receipts and notices of scrutiny.

5. It is not in dispute—nor was it before the Tribunal—that the respondent was an elector of the Alleppey Constituency eligible for election and that his two proposers were electors of the Devicolam Constituency and therefore qualified to act as proposers. P. W. 4, Devasia Varkey, the proposer in Ext. P-2 is Serial No. 811 in Part No. 115 of the electoral roll for the Devicolam Assembly Constituency while Mohammed Kutty the proposer in Ext. P-5 is Serial No. 927 in Part No. 111 of the same roll. But, in furnishing the electoral roll numbers of the proposers in the nomination papers, Exts. P-2 and P-5, while their serial numbers in the respective parts and the name of the constituency were correctly entered, the serial numbers of the parts in the roll were wrongly entered as 60, instead of 115 and 111 respectively, in both papers.

6. It might be as well to explain at this stage how, not merely the respondent and his two proposers but also the Assistant Returning Officer, P. W. 1, who received and checked the papers, came to make this mistake. The village of Peruvanthanam to which both the proposers belong was originally part of the Manimala Constituency which was Constituency No. 60 of the Travancore-Cochin State. On the fresh delimitation following the formation of the Kerala State, the Manimala Constituency was abolished and this particular village was added to the Devicolam Constituency which is Constituency No. 43 of the Kerala State. To prepare the electoral roll of the new Devicolam Constituency the parts appertaining to the villages newly attached to it had to be separated from the old rolls and assigned new serial numbers in the new roll in accordance with rule 24 of the Preparation of Electoral Rolls Rules, 1956, (made under section 28 of the Act), and that is how the roll,

Exts. P-1, which was officially supplied to P. W. 1 was prepared, the parts for Peruvanthanam with which we are concerned being assigned the numbers 115 and 111. The evidence of P. W. 1 shows that the respondent asked him for the electoral roll of the constituency for the purpose of filling up his nomination papers. Thereupon P. W. 1 got Ext. P-1 containing Parts 81 to 123 of the roll from the Taluk Office, and it was with reference to this that the nomination papers, Exts. P-2 and P-5, were filled up. But whereas in Ext. P-1 the number of the old Manimala Constituency namely, the number 60, which should have been but was not defaced, appears boldly in print on the first page of the part concerned with little to show to what it relates, the serial number of the parts in the new constituency of Devicolam, is written inconspicuously in ink as the second page. P. W. 1 did not at the time notice these writings in ink—he cannot say whether they were there at the time—nor did the respondent or his proposers. All of them thought that the number 60, in bold print was the serial number of the part in which the names of the proposers appeared, and that is how the mistake arose. P. W. 1 discovered the mistake the next day when he received a proper and complete copy of the electoral roll with the part numbers in print. But, by then, it was too late to do anything about it.

7. The scrutiny of nominations took place on 1-2-1957 at Muvattupuzha in the presence of the several candidates and their proposers, and P. W. 2, the Returning Officer, who conducted the scrutiny rejected both Exts. P-2 and P-5 by his orders Exts. P-7 and P-8 respectively. P. W. 1 assisted at the scrutiny and the respondent produced before P. W. 2 the same copy (Ext. P-3) of the electoral roll of the Alleppey Constituency as he had produced before P. W. 1 when presenting his nomination papers.

8. The reasons given for the rejection are the same in both cases and Exts. P-7 and P-8 are more or less in the same terms. Ext. P-7 runs as follows:

> "Objection was raised to the acceptance of this nomination paper on the ground (1) that a certified copy of the electoral roll of the Alleppey Assembly Constituency of which the candidate is stated to be a voter has not been produced (2) that the part and Serial Number of the proposer noted in the nomination paper is not correct. I find that both these objections are correct on the face of it. Neither the candidate nor his proposer or his authorised agent is present at the time of scrutiny and I am unable to see whether the candidate is in a position to rebut the objection Subsequently the candidate and proposer appeared but even then a certified copy of the electoral roll of the Alleppey Constituency was not produced by them. It is stated that the name of the proposer is found in the electoral roll though in another part. I find that the name appears in Part No. 115 as No. 811 against Part No. 60 Serial No. 811. Though this

may be a mistake in writing up the Part Number the correction ought to have been made at the time of presenting the nomination paper and not at this stage. This together with the fact that an attested copy of the electoral roll of the Alleppey Constituency has not been produced, makes the nomination invalid. The nomination paper is rejected."

9. Ext. P-8 by which Ext. P-5 was rejected runs thus:

"Objection is raised to the acceptance of this nomination paper on the grounds (1) that a certified copy of the electoral rolls of the Alleppey Assembly Constituency of which the Candidate is an elector is not produced and that (2) the Part No. and Serial No. of the proposer noted in the nomination paper is not correct. On the face of it the objections are correct. The candidate requests for time for 24 hours to produce the certified copy. But it will be noted that the provision of section 33 is mandatory that it shall be produced at the time of scrutiny at least. This has not been done. Also the name of the proposer is found as No 927 of Part 111 of the rolls against Part 60 Serial No. 927. This mistake ought to have been corrected at the time of presentation of the nomination paper. I cannot possibly allow the request to grant time for producing the certified copy nor could I correct the mistake in the nomination paper at this stage. For the above reasons the nomination paper is rejected."

10. It is to be noted that the only grounds stated for the rejection are: (i) that the candidate did not produce a certified copy of the electoral roll of the Alleppey Assembly Constituency and, (ii) that the electoral roll number of the proposer as given in both the nomination papers was wrong in that the serial number of the part of the roll in which the proposer's name appears was given as 60 instead of 115 and 111 respectively. No doubt is raised as to identity or qualification; in other words there was no question of impersonation or of ineligibility either in respect of the candidate or his proposers. This is the evidence of P.W. 1 and of the respondent himself as P.W. 3. Both of them have said that the only objections taken at the time of the scrutiny—the objections were oral—were those mentioned in Exts. P-7 and P-8 and that no doubt whatsoever was raised as to the identity of the proposers. In answer to a specific question in chief examination whether anybody took objection as to identity, the Returning Officer, P.W. 2, gave the unequivocal reply, "No", and his answer in cross-examination that objection was actually taken regarding the identity of the proposer and that he was unable to come to any definite conclusion in the matter was rightly discounted by the Tribunal. So also the proposer, P.W. 4, stated both in chief-examination and in cross-examination that no doubt whatsoever was expressed by anybody either with regard to the signature of the proposer in the nomination paper or with regard to his identity. We agree with the Tribunal that no weight statement in can be attached to his subsequent

cross examination that the present appellant raised some question as to the identity of the proposers because of the mistake in their electoral roll numbers, or on the appellant's own evidence to that effect. A doubt regarding identity implies a charge of impersonation, a very serious matter in comparison with which a mistake in the electoral roll number is a mere trifle, and had any such doubt been raised by anybody or felt by himself we cannot conceive of the Returning Officer, P. W. 2, having omitted to mention it in Exts. P-7 and P-8. In the same way we are not prepared to attach any weight to P. W. 2's statement that objection was taken to the correctness of Ext. P-3 (the copy of the Alleppey roll produced by the respondent) and that he was unable to decide whether Ext. P-3 was a correct copy or not. No. Such thing is said in Exts. P-7 and P-8 and no other witness, not even the respondent, speaks to this. Everybody concerned seems to have been satisfied that Ext. P-3 was a true copy and that the respondent was an elector of the Alleppey Constituency and thus qualified under Section 5 (c) of the Act. The objection was only that Ext. P-3 was not a certified copy.

11. The first question is whether it was obligatory on the part of the respondent to have produced a certified copy of the electoral roll of the Alleppey Constituency of which he was an elector. That a copy (printed copy) of the part of the roll in which his name appears was produced by the respondent is admitted, and we see no reason to doubt the evidence of P. W. 1 and of the respondent that Ext. P-3 was the copy produced both before P. W. 1 at the time of the presentation of the nomination papers, and before P. W. 2 at the time of the scrutiny, in compliance with section 33 (5) of the Act. We might add that it is not in dispute that Ext. P-3 is a true copy of the roll as proved by a comparison with Ext. P-10, a certified copy of the roll. It has also come out in evidence—and this was admitted by the appellant herself—that all recognised political parties are officially supplied with a few copies of the electoral roll, and the evidence of P. W. 5, the President of the Alleppey District Congress Committee—the respondent is a member of the Congress Party—read with the evidence of the respondent shows that Ext. P-3 was one such copy officially supplied to P.W. 5 and handed over by him to the respondent. The appellant has admitted that she herself got a copy of the electoral roll of her constituency in the same manner through her party, the Communist Party, but she did not choose to produce that copy in support of her assertion that it bore the signature of the Electoral Registration Officer and the seal of the Taluk Office in proof of authenticity. Ext. P-3 bears no such signature or seal, but this as we shall presently see is of no consequence.

12. Section 33 (5) of the Act, the non-compliance with which is one of the two reasons for the rejection of the nomination papers runs as follows :

"Where the candidate is an elector of a different constituency a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny".

The section itself, it will be noticed, makes a distinction between a copy and a certified copy. If what is produced is a copy of the entire roll or, as in the present case, of the relevant part, a copy will suffice. But if what is produced is only a copy of the relevant entries in the roll then it must be a certified copy. Surely the words "copy" and "certified copy" could not have been used in the same sense, and the juxtaposition of these words in relation to different sets of circumstances makes it quite apparent that P. W 2 was wrong in insisting on the production of a certified copy of the relevant part. So long as what was produced was a copy of the entire roll or, as in this case, of the relevant part, he had to be content with that and could not insist on the production of a certified copy. The word "copy" means nothing more than a true reproduction and Wharton defines it as "the transcript or double of an original writing". Section 33 (5) of the Act enjoins only the production of an ordinary copy or what we might call an uncertified copy when what is produced is a copy of the entire roll or part, and Ext. P-3 being undisputedly a true copy, its production was full compliance with the section. We see nothing in the section to warrant the argument advanced on behalf of the appellant that there must be something in the copy, either in the shape of a signature or a seal, proclaiming its official origin and therefore its authenticity. *Sambandhan v. Election Tribunal*, A. I. R. 1954 Madras 231, is a case in point.

13. The only other question is whether the mistake with regard to the electoral roll numbers of the proposers as furnished in the nomination papers is a defect of a substantial character within the meaning of section 36 (4) of the Act which says.

"The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

This is in the nature of a proviso to sub-section (2) of the same section which provides for rejection, and the deletion of the word "technical". from this sub-section by Act 27 of 1956 makes it clear that a defect, whether technical or otherwise, must be condoned if it is not of a substantial character.

14. Under section 36 (2) (b) of the Act the Returning Officer may reject a nomination if there has been a failure to comply with any of the provisions of section 33. Section 33 (1) requires that a nomination paper should be completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The prescribed form requires that the electoral roll number of the proposer should be entered in column (2) thereof, and both the instructions appended to the form and the definition of the term "Electoral roll number"

in the rules shows that the name of the constituency, the serial number of the part, and the serial number of the entry in the part, of the roll in which the proposer's name appears, should be given. Since the roll for each constituency is prepared in parts, in each of which the numbering of the electors begins with the number 1, it is clear that the electoral roll number by which the particular elector's name can be located in the roll is not complete, unless all these particulars are furnished. When a worng part number is furnished it cannot be said that the nomination paper has been duly completed in the prescribed form, but whether the defect is substantial or not will depend on whether it is such as to defeat the purpose of the requirement that the electoral roll number of the proposer should be entered in the nomination paper. Obviously the purpose is to ensure that the proposer's name can be readily located in the electoral roll so as to enable the Returning Officer to satisfy himself that the proposer is an elector of the constituency as required by section 33 (1), before he accepts the nomination under section 36(6). Now we have seen that in this case there was no doubt expressed as to the eligibility of either of the two proposers and, as the orders Exts. P-7 and P-8 themselves show, the Returning Officer was able to satisfy bimself by a reference to the correct part of the roll, which was pointed out to him, that both the proposers were, in fact electors of the constituency. The purpose of supplying the electoral roll number was completely fulfilled, and we do not think that the defect can be said to be a substantial defect.

15. It will be seen that both P. Ws. 1 and 2 were able to locate the names of the proposers in the electoral roll and thus ascertain that they were really electors of the constituency. Had P. W. 1 noticed the defect when he compared the nomination papers with the roll in obedience to section 33 (4) of the Act, he would doubtless have acted under the proviso thereto and, either had the part numbers corrected, or directed that the error be overlooked. For, the very purpose of the preliminary examination at the time of the presentation is to ensure that such errors, if any, are corrected then and there, before the notices of nominations are published. The mistake in this case was undoubtedly a clerical error in regard to the electoral roll numbers of the proposers, and it comes precisely within the scope of the proviso. Wharton defines a clerical error as an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it, and the mistake in the present case was just such a mistake. If a mistake is a mere clerical error which ought to be corrected or overlooked under the proviso to section 33 (4) we think it necessarily follows that it is a defect which is not substantial and which must be condoned under section 36 (4). There might be other kinds of mistakes as well that come within the ambit of section 36 (4), but a mistake of the kind referred to in the proviso to section 33 (4) must undoubtedly fall within its scope. Of course, if by reason of the mistake the Returning Officer, P. W. 2, had been unable to locate the names of the proposers in the roll,

then that would be a different matter. That would possibly be a substantial defect since it would mean that P.W.2 was unable to satisfy himself that the candidate had been duly proposed by an elector of the constituency as required by section 33(1). In that event P.W.2 would have had to hold a summary inquiry giving the candidate time to rebut the objection under the proviso to section 36(5). But all this does not arise in the present case for, as Exts. P-7 and P-8 show, the candidate, namely, the respondent, was able to rebut the objection regarding the incorrect roll numbers and point out the names of his proposers in the electoral roll.

16. It is said that such a test would mean that the same defect might be unsubstantial in one case and substantial in another. We are afraid that that is so. Whether a defect is susbtantial or not is not a question to be answered in the abstract. It is not something inherent in the defect itself but something to be determined in relation to the surrounding facts, the test in a defect like the present being whether the purpose of the information required to be furnished is defeated. Where that is not, we do not think that the defect can be substantial.

17. On behalf of the appellant reliance is placed on the decisions in *Rattan Anmol Singh* v. *Ch. Atma Ram*, A. I. R. 1954 S. C. 510, *Balasubramanyan* v. *Election Tribunal*, A. I. R. 1954 Mad. 730, *Briji Sunder* v. *Election Tribunal* A. I. R. 1957 Raj. 189, *Gotard and others* v. *Clarke and others*, 49 L. J. Q. B. 474, *Baldwin* v. Ellis, (1929) 1 K. B. 273, and *Moorhouse* v. *Linney*. Thorpe v. *Linney*, 15 Q. B. D. 273. But we do not think that these decisions are of much assistance to her. In the A. I. R. 1954 Supreme Court case, the nomination papers concerned were not signed by the proposers and seconders in the way in which the Act required them to be signed in the case of persons who were unable to write their names, and therefore the papers not being signed at all did not satisfy the essential requirement of section 33(1) of the Act (as it then stood) that a nomination paper shall be subscribed by the candidate himself as assenting to the nomination and by two persons having certain qualifications as proposer and seconder. Even so the observation in Paragraph 14 of the judgment shows that if the substance of the matter, namely, the satisfaction of the Returning Officer at a particular moment about the identity of the person making a mark in the place of signature, were established, the omission to formally record the satisfaction in the shape of an attestation could properly be regarded as an unsubstantial technicality. If that be so, and if what was really an unsubscribed nomination paper could be accepted provided the Returning Officer was satisfied at the particular time of the identity of the person putting the mark, a case like the present where the defect was only a clerical mistake in the electoral roll numbers of the proposers, and the Returning Officer was fully satisfied of the substance of the matter, namely, that the proposers were electors of the constituency, would stand on a much stronger footing.

18. The A. I. R. 1954 Madras case and the A. I. R. 1957 Rajasthan case are readily distinguishable on the facts, while the English cases are of little assistance since they deal with the statutes very differently worded from the statute which we are now construing. We do not think it necessary to say more about these cases, for it seems to us that the matter is really concluded by the decision of the Supreme Court in *Karnail Singh* v. *Election Tribunal, Hissar*, 10 E. L. R. 189. The facts of that case are set out in full in the judgment of the Tribunal which is reported in *Ajayab Singh* v. *Karnail Singh*, 6 E. L. R. 368. There as in this case, the defect was in respect of the description of the part of the electoral roll in which the name of the candidate appeared. Column 8 of the nomination form then in force required the serial number of the candidate in the electoral roll of the constituency in which his name was included to be furnished and, under note 6 of the form, where the roll was in parts and separate serial numbers were assigned to the electors in each part, the description of the part in which the name of the person concerned was entered had also to be given. Just as in the present case it was only if the description of the part were given that the information would be complete, and only then could the name of the person concerned, be located in the roll. The description of the part was incomplete in that case. But, as in the present case, the entry in the roll was pointed out to the Returning Officer. The nomination was rejected by the Returning Officer, and the judgment of the Supreme Court affirming the decision of the Tribunal setting aside the election on the ground that the nomination was improperly rejected is a short judgment and may be set out in full :

> "The Tribunal in this case held that the nomination paper of Sher Singh was wrongly rejected on the ground that column No. 8 in the nomination form was not duly filled up. The only defect pointed out was that the name of the subdivision was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected. The majority of the Tribunal, in these circumstances, were justified in their conclusion that the result of the election was affected by this wrong rejection of the nomination paper.
>
> Mr. Chatterjee for the appellant has not been able to persuade us to take a contrary view.
>
> The result, therefore, is that this appeal fails and is dismissed with costs."

It is true that that was a case where the part was not fully described and not a case of a wrong description. Also that the entry could have been more readily traced than in the present case. Nevertheless there is no difference in principle. Inherently the defect was the same as in the present case and, whether it was substantial defect or not, was answered by the objective test whether, in fact, the defect defeated the purpose for which the information was required, by preventing the Returning Officer from locating the name of the person concerned in the roll and thus satisfying himself that that person was an elector.

19. The appeal fails and is dismissed with costs. (Advocate's fee Rs. 300).

M. S. MENON, *Judge.*

21st February, 1958. P. T. RAMAN NAYAR, *Judge.*

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